

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL NO.227 OF 1987

WITH

CIVIL REVISION APPLICATION NO.57 OF 1988

AND

CIVIL REVISION APPLICATION NO.58 OF 1988

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

GUJARAT SECONDARY EDUCATION BOARD & ANR.

VERSUS

UMA DATTATRAA DONGRE & ANR.

Appearance:

(In second appeal)

MR AD OZA for appellants

MR SB VAKIL for respondent No.1
MR VM PANCHOLI for respondent No.2

(In civil revision application No.57/88)

MR SB VAKIL for petitioner
MR AD OZA for respondents No.1 & 2
MR VM PANCHOLI for respondent No.3

(In civil revision application No.58/88)

MR AD OZA for petitioners
MR SB VAKIL for respondent No.1
MR VM PANCHOLI for respondent No.2

Coram: MR.JUSTICE S.K. Keshote,J
Date of decision: 04/04/2000

C.A.V. JUDGMENT

#. As all these three matters arise from one suit filed by plaintiff-respondent No.1 in Second Appeal and civil revision application No.58 of 1988, and then petitioner in the civil revision application No.57 of 1988, the same are being taken up for hearing together and are being disposed of by this common order.

#. The plaintiff-respondent No.1 in the Second Appeal filed Regular Civil Suit No.1840 of 1985 in the court of Civil Judge (J.D.), Vadodara, and prayed for a decree of mandatory injunction directing the appellants to produce answer books of subjects Mathematics I & II, Physics (Theory), Chemistry (Theory) of the examination of XII standard higher secondary science stream conducted in June 1985 and prayed for further directions directing the appellants to re-check, reevaluate all the answer books and correct the result accordingly. The suit has been contested by defendants-appellants. The learned trial court, under its judgment and decree dated 25.6.87, decreed the suit and declared that the Board has shown negligence in examining the answer books of the subjects of Chemistry theory paper of the plaintiff and it was further declared that instead of 52 marks assigned to the plaintiff-respondent by the Board in the subject Chemistry, the Board must assign 77 marks in the Chemistry paper and the Board was directed to correct the result accordingly. It is necessary to mention here that in the suit, ultimately the plaintiff-respondent has restricted the claim for Chemistry theory paper only, meaning thereby, she has given up her claim for the subjects Mathematics I & II and Physics theory. The appellants, the Gujarat Secondary Education Board,

Gandhinagar and Examination Secretary, Gujarat Secondary Education Board, Gandhinagar, preferred Regular Civil Appeal No.31 of 1987 against the judgment and decree of the trial court in the court of District Judge at Vadodara. The appeal came to be heard and decided by learned 4th Extra Assistant Judge, Vadodara, on 1.10.87. The appeal was partly allowed. The declaration part of the decree of the trial court was maintained. Rest of the relief granted by the trial court was quashed and set aside and the Board was directed to re-examine and re-evaluate the answer book of the candidate in the subject of Chemistry theory and the Board was further directed to examine the answer book with reference to the guidelines issued by the court and the Board is directed to report the matter within two weeks in the trial court and after receiving report, the trial court is directed to pass the final decree.

#. Against the judgment and decree of the first appellate court, the appellants filed this Second Appeal in this court. The plaintiff-respondent filed civil revision application No.57 of 1988. The Board filed civil revision application No.58 of 1988. In the revision and Second Appeal, identical prayers have been made by the Board. On being put by the court, the learned counsel for the Board has given out explanation for filing of the two proceedings, i.e. Second Appeal and revision application against the order of the first appellate court, that in the Second Appeal an objection has been raised that the same is not maintainable. The judgment of the learned first appellate court is not in fact where the court has decreed the suit, the matter in fact has been remanded back to the trial court.

#. I fail to see any justification in this approach of the Board. It is nothing but only a sheer wastage of money of the Board. It is not unknown to the court as well as members of the Bar that a Rule is there in the Gujarat High Court Rules where in case any court reaches to the conclusion or it is satisfied that the appeal is not maintainable, then it may be converted in revision application and vice-verse. Be that as it may, civil revision application No.58 of 1988 has come up for preliminary hearing in the court on 28.1.88. The matter was admitted and interim relief in terms of para-4(B) thereof has been granted. Paragraph 4(B) of the civil revision application No.58 of 1988 reads as under:

4(B) That pending the hearing and final disposal of this civil revision application, execution, operation and implementation of the judgment and

order dated 1.10.1987 passed by the 4th Extra Assistant Judge at Vadodara in Regular Civil Appeal No.31/87 may please be stayed

This interim relief granted by this court in the revision continues for all these years. The revision application No.57 of 1988 has been placed on the Board from time to time. As and when this matter was placed on the Board, looking to the controversy which has arisen therein, the court has put to the learned counsel for the petitioner therein, the plaintiff in the suit, that he may take instructions whether anything now substantial survives in this matter as the suit pertains to the result of the higher secondary examination which was declared in the month of June 1985. The court was of the opinion that probably, by passing of time, now the plaintiff may not have any interest in the litigation. The learned counsel for the petitioner-plaintiff has given out that two other matters which are cognate matters arise from the suit are not placed on the Board. Then revision application No.58 of 1988 and Second Appeal were ordered to be placed on the Board. It was found that the file of Second Appeal No.227 of 1987 was not traceable in registry and ultimately the learned counsel for the parties have reconstructed this file and thus, all these three matters have come up for hearing in the court on 3rd March 2000. On that day, again the court has asked the learned counsel for the plaintiff-petitioner whether these matters still survive, to which the learned counsel for the petitioner has given out that merely because of passing of time the court may not go with the feeling that the matter does not survive. The matters are to be decided on merits without having this approach. It is difficult to appreciate this approach of the senior member of the Bar. It is true that by passing of time, matters may not become infructuous and the same may be decided on merits, but it is equally true in the present scenario that it is equally concern of both, the members of the Bar as well as the Bench to see that unnecessary, the court's valuable and precious time may not be consumed in litigation in which ultimately the litigants may not have any interest. Looking to the facts of the case, I am of the opinion that possibly, now the petitioner-plaintiff may not have any interest in this litigation. It appears that the petitioner-plaintiff would not have been responding to the letters sent by the learned counsel and the learned counsel is not in a position to make any statement and that is the reason that it may be the insistence of the advocate for deciding the matter on merits. However, this court is not under any obligation to proceed as what it is desired

by learned counsel for the petitioner-plaintiff. If ultimately the court finds that the plaintiff-petitioner has no interest in the matter, then what for its valuable time has to be consumed to decide such matter. The question involved in this matter may be of substance and importance, as I have my own reservation whether in the absence of any provision of re-evaluation or re-assessment in the Act, Rule or Regulation of Board, the civil court has any jurisdiction to pass a decree for re-evaluation or re-assessment of the answer books of the candidates. But by passing of this long time, possibly the plaintiff-petitioner may have left with no interest in this matter. By now, she would have been settled in her life. After passing of fifteen years there may not be any significance or relevance of this matter, i.e. whether 52 or 77 marks in the Chemistry paper.

#. There is yet another reason on the basis of which it can be inferred that the petitioner-plaintiff has left with no interest in the matter. The court has stayed the judgment and decree of the first appellate court way back on 28.1.88. I do not find anything on the record of these matters where the plaintiff-petitioner has made any application for early listing of these matters. The matters of this category are to be decided expeditiously by the court itself whether any request for early disposal thereof is made or not but our system is such and looking to the high pendency of matters possibly it has not been done. However there must be some system to give priority to this class of litigants by categorizing them in that particular category and it may be reflected by mere seeing of the file itself. The registry may also take care of such category of matters but as all these matters go under one category and after admission of the same, naturally unless the court gives direction for early disposal of the same, these are being placed in the cupboard and are being listed as and when their turn comes for hearing.

#. In the result all these three matters are dismissed. The order of the first appellate court may not be given effect to as by passing of time, nothing now substantial survives in these matters. It will be only a futile exercise. However, liberty is granted to the plaintiff-petitioner for revival of her matter or all these matters by filing of simple note, if she considers that still these matters survive and she is interested to get decision on merits in these matters. A copy of this order be sent to the petitioner - Uma Dattatraya Dongre by registered post A.D. for her information. Rule in all the three matters discharged. Interim relief granted

in one revision application stands vacated. No order as
to costs.

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(sunil)